

ADMINISTRATIVE PANEL DECISION

Marie Claire Album v. Marie Beauty, Francesco Group
Case No. D2023-2103

1. The Parties

The Complainant is Marie Claire Album, France, represented by Cabinet Germain & Maureau, France.

The Respondent is Marie Beauty, Francesco Group, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <marieclairebeauty.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2023. On May 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 16, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 19, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2023. The Response was filed with the Center on June 8, 2023.

The Center appointed John Swinson as the sole panelist in this matter on June 13, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

As discussed in more detail below, the Panel issued a Procedural Order on July 13, 2023. The Respondent filed a reply to the Procedural Order on July 20, 2023. The Complainant filed a reply to the Procedural Order on July 27, 2023. The Respondent filed a second reply to the Procedural Order on July 31, 2023.

4. Factual Background

The Complainant is a French organisation that publishes the magazine with the title Marie Claire.

Marie Claire is a renowned monthly women's magazine. It was first published in France in 1937 and is currently available in 27 markets internationally. For example, there is a United Kingdom edition of Marie Claire and an associated website located at <marieclaire.co.uk>.

The Marie Claire magazine is intended for women and deals with subject matter such as beauty and fashion, as well as more cultural and social subjects such as the place of the woman and empowerment.

The Complainant has organised competitions and award ceremonies related to beauty products through its well-known "Les Prix d'Excellence de la Beauté Marie Claire" which has been in existence for more than 30 years.

The Complainant owns a portfolio of registered trademarks, including for example United Kingdom registered trademark number UK00902389567 filed on September 9, 2001 and registered on December 10, 2009 claiming protection for goods in classes 9, 14, 16, 18, 20, and 21.

The disputed domain name was registered on November 11, 2022.

The Respondent is Marie Claire Bourgeois. The Respondent is trained as a beauty therapist and operates a beauty and massage business in the United Kingdom called MCBBeauty.

The website at the disputed domain name resolves to a website promoting the Respondent's beauty and massage business. The website includes the heading *MCBeauty*, with the MCB letters in bold. Apart from in the disputed domain name, the website does not include the term "Marie Claire". The Respondent's social media presences, linked to from its website, also use MCBBeauty (not "Marie Claire") as a source identifier.

In December 2022, the Complainant's lawyers wrote to the Respondent's business "MCBeauty" requesting transfer of the disputed domain name to the Complainant. The Respondent responded, stating "you have jumped to the wrong conclusion, as I am using my birth name as part of my business title and website. Therefore, I will not be ceasing use of this domain name". An exchange of correspondence resulted. The Complainant asked for proof that "Marie Claire Bourgeois" was the Respondent's name. None was provided. Ultimately, the Respondent offered to transfer the disputed domain name to the Complainant for GBP 18,452 being her estimated cost of rebranding. The Respondent provided the Complainant with a line-item analysis as to how she calculated this amount. The Complainant did not accept the Respondent's offer.

The Registrar's records for the disputed domain name include a reference to Francesco Group in the address line. Neither party referred to this in their submissions. A business card provided by the Respondent states "Inside Francesco Group Hair Salon".

5. Parties' Contentions

A. Complainant – Submissions in Complaint

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent operates her business under the name MCBeauty or Marie, but “never Marie Claire nor Marie Claire Beauty”, and that the Respondent does not have a company registered called “Marie Claire Beauty”.

Prior to registration of the disputed domain name, the Respondent was not known as “Marie Claire Beauty”.

The Respondent could have selected many other domain names combinations or variations such as “mcbeauty” or “mariebourgeois” instead of a domain name that included “MarieClaire” plus “beauty”.

Due to the notoriety of the Marie Claire brand, which extends to the beauty field, and its high recognition and long history of use, the Complainant contends that the Respondent registered the disputed domain name to take advantage of the Complainant’s strong reputation in the Marie Claire brand.

Additionally, the high price offered by the Respondent to rebrand and transfer the disputed domain name also suggests bad faith, particularly because the Respondent’s website and business do not use “Marie Claire Beauty”.

B. Respondent – Submissions in Response

The Respondent states that the Respondent has been in business since April 2022, and that the Respondent trades as MCBeauty “as this incorporates the initials of my name – MCB”. The Respondent wished to register a domain name using MCBeauty, but nothing suitable was available, so she selected the disputed domain name because it was available.

The Respondent contents: “At no time was it my intention to pass myself off as being related to Marie Claire Magazine and its products and as such the style and fonts used on my website and printed material in no way replicates that used by Marie Claire Magazine.”

The Respondent asserts that this dispute has caused her distress, and that she is prepared to transfer the disputed domain name to the Complainant for agreed compensation to cover the cost of her rebranding.

The Respondent provided documentary evidence that her birth name is Marie Claire Bourgeois.

C. Respondent – Submissions in reply to Procedural Order

The Respondent provided a business card “which shows that the business name is MCBeauty but the website is [the disputed domain name] as that was the only domain available which related to the business name. For clarity, the MC in MCBeauty stands for Marie Claire which is my name”.

While the Respondent’s due date to submit a response to the Procedural Order No. 1 was July 20, 2023, the Respondent’s second submission provided screenshots for orders of business cards and other materials bearing the MCBeauty name dated March 2, 2023 and November 23, 2023. The Panel will consider this extemporaneous submission for the sake of completeness, without the content affecting the outcome of the decision. The Respondent further stated “As a small business owner, I started a company based on my own initials MCB (Marie Claire Bourgeois). I named my business MCBeauty as a play on my initials with the logo of MCB. All price list and other documentation has always used MCBeauty. I have never traded as MCB exclusively. As evidenced here by my first marketing purchase, on the 02/03/2022. [...] The domain MCBeauty was unavailable so I considered Marie Claire Beauty being what the abbreviation was for and my legal names. This domain was available and for sale. I had not considered any similarity to the publication ‘Marie Claire’ and the provider ‘Go Daddy’ did not state that this domain was anyone else’s intellectual property upon purchase. [...] I do not see any chance of potential clients considering me to have an affiliation with ‘Marie Claire’. My website is not easy to find on a search, clearly expresses who I am, my qualifications and background. The website shares no similarities to any Marie Claire branding or logo. [...] I wish to repeat again that as soon as ‘Marie Claire’ made me aware of this matter I did offer to sell them this domain, after seeking advise from ‘Go Daddy’, with consideration of my costs in establishing a new website. This was met

with no communication for over 6 weeks, which is an unreasonable amount of time. After contacting them again after this prolonged period of time, they said they would respond by 12th March 2023, which came and went with no communication. They have instead proceeded to insinuate that I am lying about my name and trying to profit from their name or reputation”.

D. Complainant – Submissions in reply to Procedural Order

The Complainant responded to the Respondent’s submissions in reply. The Complainant stated that the business card was undated and did not show use prior to the Respondent becoming aware of this dispute. Additionally, the business card shows that the Respondent’s business name is “MCBeauty” and not “Marie Claire Beauty”. This business name does not correspond to the disputed domain name.

The Complainant submits: “It can only be concluded that registration and use of the [disputed domain name] clearly exceed what could be a fair commercial need and has been adopted only in a view of surfing on the notoriety gained by the Complainant trying to attract and divert consumers.”

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and are being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

The Respondent’s name in the Registrar’s records is “Marie Beauty” but there is no evidence before the Panel that “Marie Beauty” is a legal entity. Based on the Response, the Panel will treat Marie Claire Bourgeois as the Respondent.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, “beauty”) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Respondent is making a commercial use of the disputed domain name.

There is no evidence before the Panel that, prior to registration of the disputed domain name, the Respondent used “Marie Claire Beauty” or “Marie Claire” in connection with her business. There is however evidence that the Respondent uses “MCBeauty” and “Marie” in connection with her business, but these terms do not correspond to the disputed domain name.¹

Paragraph 4(c)(ii) of the Policy enables a respondent to demonstrate rights or legitimate interests in the disputed domain name if the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name. For a respondent to demonstrate that she has been commonly known by the domain name or a name corresponding to the domain name, it is not necessary for the respondent to have acquired corresponding trademark or service mark rights. To succeed in this case, the respondent must be “commonly known” by “Marie Claire Beauty”.

There is no evidence before the Panel that shows that the Respondent or her business was commonly known as “Marie Claire Beauty”. The Respondent’s name does not include the term “beauty”. The Respondent’s business name – as used on her own website, and on her various social media pages – is “MCBeauty”.

As stated above, the Panel issued a Procedural Order. The Procedural Order requested that the Respondent provide any evidence she may have of her use of “Marie Claire Beauty” – as opposed to MCBeauty – in her business activities prior to becoming aware of the dispute and gave the Respondent an additional opportunity to provide evidence of the use of the disputed domain name in the branding of her business.

The Respondent provided a photograph of her business card that included “MCBeauty” and “MCB”. The business card did not refer to “Marie Claire Beauty” or “Marie Claire”. The Respondent further provided evidence of the orders of the business cards and other business materials that included “MCBeauty” and “MCB” but once again did not include use of the name “Marie Claire Beauty” (beyond that in the disputed domain name).

The record contains no other factors demonstrating use of “Marie Claire Beauty” by the Respondent except for the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

¹ The website at the disputed domain name, in an “about me” section states: “Welcome to my website. I am the face and person behind the business. My full name is Marie Claire Bourgeois and my initials MCB is where my business name, MCBeauty, came from.”

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel has come to this conclusion in part because the disputed domain name includes the Complainant's famous MARIE CLAIRE trademark in its entirety along with the word "beauty" which is a term associated with the Complainant.

It appears to the Panel that even though "Marie Claire" is part of the Respondent's personal name, and the Respondent is in the beauty business, the Respondent opportunistically registered and used the disputed domain name for her business because of the Complainant's reputation and not because "Marie Claire" is part of her personal name – to the contrary, her own social media postings refer to her as "Marie" (only, without "Claire") or MCBeauty.

In particular, despite being asked for specific evidence on the question, there is no evidence that "Marie Claire" or "Marie Claire Beauty" is the name of the Respondent's beauty and massage business or is used anywhere in that business other than in the disputed domain name. There is also no evidence that the Respondent is commonly known as "Marie Claire".

The Panel notes, for example, the lack of use of the term "Marie Claire Beauty" anywhere within the website at the disputed domain name. It seems more likely than not that the Respondent, aware of the Complainant's famous MARIE CLAIRE trademark, registered the disputed domain name to take advantage of the Complainant's trademark. The Panel considers – especially as she has only provided evidence of the use of MCBeauty as a business identifier – that the long established presence of the Complainant's trademark within the beauty sector likely determined the Respondent's choice of domain name. Noting the use by the Respondent of MCBeauty on her own website and social media (and her use of "Marie" alone), the evidence suggests that the Respondent likely selected the disputed domain name due to the famous MARIE CLAIRE trademark.

The disputed domain name was registered more than six months after the Respondent commenced her MCBeauty business. The Respondent claims that her name being Marie Claire Bourgeois, her selection of MCB and MCBeauty was a play on her initials with the logo of MCB. The Panel does not dispute this, but that does not detract from the fact that the domain name is not "mcb" nor "mcbeauty" but instead wholly incorporates a famous trademark in the same sector. The Panel also notes that the Complainant's website includes a section about "beauty" at "www.marieclaire.com/beauty". The Panel concludes that noting the Respondent's business field she likely knew of the Complainant's trademark and sought to play off of that. While the Panel cannot ascertain what domain names may have been available to the Respondent at the time of the registration of the disputed domain name, the Panel cannot accept that it is a mere coincidence that the disputed domain name wholly includes a famous mark in the beauty sector whereas the Respondent does not do business by that name.

In the present case, the Panel does not place any particular weight on the fact that the Respondent offered to transfer the disputed domain name to the Complainant for GBP 18,452 being her claimed cost of rebranding; while this figure seems *prima facie* somewhat high, she has given some notion of an itemized explanation and the Panel is not prepared to discard that as wholly unreasonable. Although the Panel finds that there is no evidence that the Respondent registered the disputed domain name to sell to the Complainant, there is equally no evidence that "Marie Claire Beauty" is a name or brand used by the

Respondent. In fact, based on the evidence before the Panel, the Respondent does not use “Marie Claire Beauty” in her business, for example, the Respondent uses an iCloud email account for her emails – there is no evidence that the Respondent uses the disputed domain name as part of her email address.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <marieclairebeauty.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: July 31, 2023